IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 24654 of 2004

Between:

A.B.M. Upper Primary School, Udayagiri,

rep. by its Correspodnent, K. Srinivasulu S/o. Late Kondaiah, R/o. Udayagiri, Nellore District.

..... PETITIONER

AND

1 Govt of A.P., rep. by Secretary, Education (COSE Department), Hyderabad.
2 Commissioenr and Director of School Education, Hyderabad.
3 The Dist. Educational Officer, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the Memo No. 12080/COSE/AC 2004-4 dt. 20.10.2004 issued by the 1st respondent has no application to fill up the aided vacancies in the petitioner school in the light of the proceedings Rc.No.1552/C2/04 dt. 2.8.2004 issued by the 3rd respondent by issuing appropriate writ of mandamus or direction and pass such other order or orders.

Counsel for the Petitioner:MR.M.V.S.SURESH KUMAR

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court at the stage of admission made the following :

O R D E R:

The writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the Memo No.12080/COSE/A2 2004-4, dated 20-10-2004 issued by the 1st respondent which has no application to fill up the aided vacancies in the petitioner-school, in the light of the proceedings in RC No.1552/C2/2003 dated 02-08-2004 issued by the 3rd respondent as illegal and arbitrary.

The petitioner-school represented by its correspondent made a proposal to the 3rd respondent-District Educational Officer, Nellore seeking permission to fill up two SGBT teacher posts, which has been arisen out of retirement of aided teachers. The 3rd respondent in turn granted approval vide proceedings dated 2-8-2004, by nominating the Deputy Educational Officer, Nellore to fill up the aided vacant posts. Thereafter, the petitioner-school addressed a letter to the District Employment Officer, Nellore to send a panel of names for each category of posts. Pursuant to the approval, the petitioner-school made a paper publication in two daily news papers calling for applications to fill up the said aided posts. While the matter stood thus, the 1st respondent issued proceedings in Memo No.12080/COSE/A2/2004-4 dated 20-10-2004, and communicated the same to all the correspondents of Aided Schools including the petitioner-school vide proceedings No.8503/CP/2004 dated 09-11-2004. The said Memo is extracted hereunder:

> "No new posts of grant-in-aid would be granted and existing vacancies will also not be filled up except what has been specifically authorized since there is a general ban on recruitment except for the posts for which permission was granted specifically by the Government."

The case of the petitioner-school is that because of the impugned memo issued by the 1st respondent, the selection process has been adjourned. Hence the writ petition has been filed.

The learned Government Pleader for School Education, in spite of taking time twice for filing counter, has not filed any counter, but produced a Memo dated 20-10-2004, and submitted that as there is a general ban on recruitment imposed by the Government, the respondents have not filled up the aided vacancies, and therefore, no exception can be taken to the action of the respondents in not considering the proposals sent by the petitioner for filling up

the two aided vacancies that arose consequent upon the retirement of two teachers.

The learned counsel for the petitioner on looking into the Memo issued by the Government submitted that the general ban on recruitment imposed by the Government is applicable only to creation of new posts and does not affect the consideration of the proposals sent for filling up the two aided vacancies that arose consequent upon retirement of two teachers. In support of his contention that a duty is cast on the Government to provide grant-in-aid to private schools and it cannot disown its responsibility to fill up the aided posts on the ground of lack of resources, placed reliance on the Judgment of the apex Court in **Chandigarh Administration v. Rajni Vali ().**

Heard the learned counsel for petitioner and the learned Government Pleader for Education for the respondents, and both of them agreed for disposal of the writ petition at the stage of admission.

I am unable to agree with the contention of the respondents that the general ban imposed on recruitment by the Government in the orders issued in Memo dated 20-10-2004 is applicable even to the case of the petitioner. To wit, it would be appropriate to reproduce the contents of the Memo, which reads:

> "No new posts of grant-in-aid would be granted and existing vacancies will also not be filled up except what has been specifically authorized since there is a general ban on recruitment except for the posts for which permission was granted specifically by the Government."

Though, in the Memo issued by the Government, it is stated that no new posts of grant-in-aid would be created and the existing vacancies will also not be filled up, but in the very same Memo, it is stated that general ban is not applicable for the posts, for which permission was specifically granted by the Government. In the instant case, consequent upon retirement of two aided teachers, the petitioner sent proposals to the competent-authority for filling up the aided posts, and when it did not receive consideration, the petitioner filed writ petition in W.P.No.26342 of 2001, and this Court while disposing of the said Writ petition, by order dated 8-8-2002, directed the respondents to consider the proposals submitted by the petitioner for filling up of two aided vacancies. Pursuant to the order of this Court, it is required to notice that respondent No.2 even issued proceedings dated 7-6-2003 directing respondent No.3 to take necessary steps for filling up of two vacant aided posts in the school run by the petitioner that arose due to the retirement of two

aided teachers. The general ban on recruitment imposed by the Government came into force only from 20-10-2004, whereas the petitioner submitted proposals for filling up of the two aided posts way back in the year 2001, and the same cannot be made applicable to the case of the petitioner and more so when respondent No.2 had even directed respondent No.3 to take appropriate steps for filling up the two vacant aided posts in pursuance of the orders passed by this Court in the writ petition, filed by the petitioner challenging the inaction on the part of the respondents in considering the proposals sent by the petitioner for filling up the two aided posts that arose consequent upon retirement of two aided teachers.

In the above view of the matter, and having regard to the fact that there is already an order dated 8-8-2002 by this court in W.P.No.26342 of 2001, directing the respondents to consider the proposals sent by the petitioner for filling up the two aided posts, the respondents also having taken some steps in pursuance thereof, now cannot be allowed to contend that in view of the memo dated 20-10-2004 issued by the Government imposing general ban on recruitment, the proposals sent by the petitioner for filling up the two aided vacancies, have not been considered.

In the result, the writ petition is allowed and the respondents are hereby directed to take necessary steps to fill up the two vacant aided posts in the petitioner-school in accordance with law. The memo

dated 20-10-2004, issued by the 1st respondent has no application since permission has already been taken by the petitioner-school prior to the issuance of the said memo. No costs.

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22-02-2005

Mjl/*

To,

1. The Secretary, Government of Andhra Pradesh, Education (COSE

Department), Hyderabad.

2. The Commissioner and Director of School Education, Hyderabad.
3. The Dist. Educational Officer, Nellore.

4. 2 CCs to G.P. for School Education, High Court Buildings, Hyderabad.

5. 2 CD copies.